

| Page 1  | Page 2   |
|---|--|
| <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF HAWAII</p> <p>3 CHRISTOPHER MacDONALD, )</p> <p>4 Plaintiff, )</p> <p>5 vs. ) CV 02-0084-LEK</p> <p>6 KAHIKOLU, LTD. dba FROGMAN )</p> <p>7 CHARTERS, )</p> <p>8 Defendant, )</p> <p>9</p> <p>10 Deposition Noticed by: Howard G. McPherson, Esq.</p> <p>11</p> <p>12 DEPOSITION OF MARK L.K. NA'AUAO</p> <p>13</p> <p>14 Taken on behalf of the Plaintiff, at Iwado Court Reporters,</p> <p>15 2233 Vineyard Street, Wailuku, Maui, Hawaii, commencing at</p> <p>16 10:06 a.m. on April 2, 2003, pursuant to Notice.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 REPORTED BY: KATHERINE EISMANN, CRR/RDR/CSR 439</p> | <p>1 A P P E A R A N C E S</p> <p>2 For the Plaintiff:</p> <p>3 HOWARD G. McPHERSON, ESQ.</p> <p>4 Galiher DeRobertis Nakamura Ono Takitani</p> <p>5 610 Ward Avenue, Suite 200</p> <p>6 Honolulu, Hi 96814-3308</p> <p>7 (808) 597-1400</p> <p>8 Fax: (808)591-2608</p> <p>9 E-Mail: Hgm@gogaliher.com</p> <p>10</p> <p>11 For the Defendant Kahikolu, Ltd. dba Frogman Charters:</p> <p>12 RICHARD C. WOOTTON, ESQ.</p> <p>13 Cox, Wootton, Griffin, Hansen &amp; Poulos, LLP</p> <p>14 190 The Embarcadero</p> <p>15 San Francisco, Ca 94105</p> <p>16 (415) 438-4600</p> <p>17 Fax: (415)438-4601</p> <p>18 E-Mail: Rwootton@cwghp.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |
| <p>1 EXAMINATION INDEX</p> <p>2 Examination by: Mr. McPherson</p> <p>3</p> <p>4 EXHIBIT INDEX</p> <p>5 Exhibit Number Description</p> <p>6 None marked.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  | <p>1 (Pursuant to Rule 14 of the Rules Governing Court</p> <p>2 Reporting in Hawaii, the Reporter's Disclosure was made and is</p> <p>3 attached hereto.)</p> <p>4</p> <p>5</p> <p>6 MARK L.K. NA'AUAO,</p> <p>7 called as a witness by and on behalf of the Plaintiff, having</p> <p>8 been sworn to tell the truth, the whole truth, and nothing but</p> <p>9 the truth, was examined and testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MR. McPHERSON:</p> <p>12 Q. Would you give us your full name again just for</p> <p>13 the record, please?</p> <p>14 A. Mark Lance Kaleo Na'auao.</p> <p>15 Q. Do you mind if I call you -- do you go by Kaleo?</p> <p>16 A. Yeah.</p> <p>17 Q. Is it all right if I call you Kaleo?</p> <p>18 A. That's fine.</p> <p>19 Q. Kaleo, have you ever testified in a deposition</p> <p>20 before?</p> <p>21 A. No.</p> <p>22 MR. WOOTTON: Can you speak up just a little bit?</p> <p>23 I can't hear you over the air-conditioning.</p> <p>24 MR. McPHERSON: Sure.</p> <p>25 MR. WOOTTON: Thanks.</p> |

Page 49

1 A. Yes.  
 2 Q. Okay. These last two items that you mentioned  
 3 that you passed on to Kari, not to force employees to go down  
 4 deeper if they didn't want to; is that right?  
 5 A. If they can't do it.  
 6 Q. If they can't do it. Okay. And then the second  
 7 thing that she's to let them know they can't dive if they have  
 8 a cold. Did Nion teach you that or is that something you  
 9 picked up along the way as first mate?  
 10 A. I picked it up on my own.  
 11 Q. After Chris's injury?  
 12 A. Way before.  
 13 Q. How did you come to understand that these things  
 14 were an important part of the training?  
 15 A. Because I blew out mine.  
 16 Q. Your ears?  
 17 A. Yes.  
 18 Q. I guess that's a good way to learn.  
 19 MR. WOOTTON: I beg to differ.  
 20 MR. McPHERSON: Or an effective way to learn. The  
 21 hardest lessons are often the best. Okay.  
 22 Q. Now, Kaleo, you mentioned you blew out your own  
 23 ear?  
 24 A. Yes.  
 25 Q. Both or one?

Page 50

1 A. One when I was little.  
 2 Q. A kid you mean?  
 3 A. Yes.  
 4 Q. Okay. Was that in the water?  
 5 A. I don't remember.  
 6 Q. Okay. How many times did you blow out your own  
 7 error ears?  
 8 A. Twice.  
 9 Q. Okay. When was the second time?  
 10 A. Free diving.  
 11 Q. For Frogman?  
 12 A. No.  
 13 Q. On your own?  
 14 A. Yes.  
 15 Q. Okay. What happened to your ear?  
 16 A. Got disorientated.  
 17 Q. You felt dizzy? Is that what you mean?  
 18 A. Disorientated, yes.  
 19 Q. Disoriented.  
 20 A. Yes.  
 21 Q. Okay. First of all, let's talk about this a  
 22 little bit. When did that happen, this free diving when you  
 23 blew out your own ear off the job? Was it before working for  
 24 Frogman?  
 25 A. While working.

Page 51

1 Q. While working but not on the job?  
 2 A. Yes.  
 3 Q. Do you remember what job you had? Was it captain,  
 4 first mate, or deckman?  
 5 A. I don't remember.  
 6 Q. Were you by yourself or with somebody when this  
 7 happened?  
 8 A. I was by myself.  
 9 Q. Okay. Did you go to a doctor for that?  
 10 A. Yes.  
 11 Q. Okay. Here on Maui?  
 12 A. Yes.  
 13 Q. Do you remember which doctor?  
 14 A. I don't remember.  
 15 Q. Do you have any sense of it was in the year 2000  
 16 or 2001?  
 17 A. I don't know.  
 18 Q. But way before Chris's injury?  
 19 A. Yes.  
 20 Q. Six months or more?  
 21 A. I don't know.  
 22 Q. Okay. How deep were you free diving at that time?  
 23 Do you know? Do you recall?  
 24 A. 10 feet.  
 25 Q. Did you have a cold?

Page 52

1 A. Yes.  
 2 Q. How long did the problem last from that incident?  
 3 A. About two weeks.  
 4 Q. So, I take it then, you weren't able to dive on  
 5 the job then during that time?  
 6 A. Yes. Can you -- what was the question again?  
 7 Q. The first question was how long did the problem  
 8 last, the medical problem.  
 9 A. Yes.  
 10 Q. You said about two weeks. Is that about right?  
 11 A. Yes.  
 12 Q. And then during that time the problem was lasting,  
 13 you weren't able to dive at work; is that right?  
 14 A. Yes.  
 15 Q. Okay. Kaleo, let's move now to the training  
 16 responsibilities of the various workers in the boat -- in the  
 17 boat crew when a new person is hired. I think we got -- what  
 18 we got so far is that the deckman helps to a certain extent,  
 19 the first mate to some extent, and the captains to some  
 20 extent; is that true?  
 21 A. Yes.  
 22 Q. Okay. And the first mates take care of the part  
 23 about equalizing, doing mooring work. Right?  
 24 A. Yes.  
 25 Q. What did the deckman do in terms of training the

13 (Pages 49 to 52)